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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,530	(02/05/2004	George N. Cox III	4152-1-PUS-9	7322
22442	7590	08/07/2006		EXAMINER	
SHERIDA	N ROSS I	PC	LUCAS, ZACHARIAH		
1560 BROADWAY SUITE 1200				ART UNIT	PAPER NUMBER
DENVER,		2	1648		
				DATE MAILED: 08/07/2004	4

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)				
	Office Action Summany	10/773,530	COX, GEORGE N.				
	Office Action Summary	Examiner	Art Unit				
· · · · · · · · · · · · · · · · · · ·		Zachariah Lucas	1648				
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the c	orrespondence address				
WHIC - Exter after - If NO - Failu Any r	CRTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DAISIONS of time may be available under the provisions of 37 CFR 1.1.5 SIX (6) MONTHS from the mailing date of this communication. In period for reply is specified above, the maximum statutory period vere to reply within the set or extended period for reply will, by statute, eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONEI	lely filed the mailing date of this communication. O (35 U.S.C. § 133).				
Status							
1)⊠	Responsive to communication(s) filed on <u>05 Fe</u>	ebruary 2004.					
•		action is non-final.					
′=	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
,—	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims							
4)⊠	Claim(s) 24-46 is/are pending in the application	1.					
•	4a) Of the above claim(s) is/are withdrawn from consideration.						
	5) Claim(s) is/are allowed.						
•	6) Claim(s) is/are rejected.						
· · · · · · · · · · · · · · · · · · ·	Claim(s) is/are objected to.						
·	Claim(s) <u>24-46</u> are subject to restriction and/or	election requirement.					
Applicati	on Papers	•					
9) The specification is objected to by the Examiner.							
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
	inder 35 U.S.C. § 119		,				
<u> </u>			(4) (5)				
_	12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a) ☐ All b) ☐ Some * c) ☐ None of:							
	1. Certified copies of the priority documents have been received.						
 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage 							
			d in this National Stage				
application from the International Bureau (PCT Rule 17.2(a)).							
* See the attached detailed Office action for a list of the certified copies not received.							
•	•						
Attachment	(s)						
	e of References Cited (PTO-892)	4) Interview Summary					
3) Inform	e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) r No(s)/Mail Date	Paper No(s)/Mail Da					

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DETAILED ACTION

Election/Restrictions

- 1. This application contains claims directed to the following patentably distinct species of the claimed invention: the species represent the claimed erythropoietin variant wherein the variant comprises a cysteine residue inserted;
 - (a) prior to the first amino acid of the protein;
 - (b) after the last amino acid of the protein;

or between two amino acids in one of the following regions;

- (c) the A-B loop;
- (d) the B-C loop;
- (e) the C-D loop;
- (f) the (f1) 1st or (f2) last 3 residues of helix A;
- (g) the (g1) 1st or (g2) last 3 residues of helix B;
- (h) the (h1) 1st or (h2 last 3 residues of helix C;
- (i) the (i1) 1st or (i2) last 3 residues of helix D;
- (i) the amino acids preceding helix A; or
- (k) the amino acids following helix D;

or between two of these regions as indicated in claims 36-43.

I.e., the Applicant may elect one of (a)-(k) or the embodiments described in one of claims 36-43.

2. The species are independent or distinct because they represent related inventions. Related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, each of the claimed species are

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mutually exclusive, and comprises a modified protein wherein the protein is modified in a different region or position- thereby reading on modified proteins with materially different designs.

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

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4. Because these inventions are distinct for the reasons given above, as having a different classifications, and because the literature and sequence searches required for any one of the groups is not required for the others, restriction for examination purposes as indicated is proper.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z. Lucas 8/2/00 Patent Examiner